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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/229,751	01/14/1999	CHARLES L. TURNBOUGH		5473

7590

11/30/2001

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EXAMINER

BHATTI, TAHIRA H

ART UNIT

PAPER NUMBER

1627

DATE MAILED: 11/30/2001

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/229,751

Applicant(s)

TURNBOUGH, CHARLES L.

Examiner

Tahira H Bhatti

Art Unit

1627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-13, 18, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 21 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### **Status of the claims:**

**Claims 11,12,13,18 and 21-22 are pending.**

**Claims 1-9 have been cancelled by the applicants preliminary amendment, dated 11-2-99.**

**The preliminary amendment added claims 15-20.**

**Upon further consideration, in response to office action, claims 1-9, 14, 16,17,19 and 20 have been cancelled by the applicant and claims 10 and 15 have been replaced with 21 and 22 respectively .**

### ***ELECTION OF SPECIES***

This application contains claims directed to the following patentably distinct species of the claimed invention: Claim 21 is directed to a composition comprising a peptide ligand of 5-12 mers. The peptides ligands of 5-12 mers are distinct each from the other, are independent and/or patentably distinct inventions, due to differences in their chemical structure and physiological, biochemical and chemical properties, that are capable of separate manufacture and/or use; and each individual compound would use distinct methods steps, would have different object of producing it, and require separate and/or divergent manual/computer search, bibliographic patent and non-patent literature searches which are separately and individually burdensome.

Further claim 21 is also directed to the binding of the peptides ligands (5-12 mers) to spores of B. subtilis, B. anthracis, and B. cereus. The structural and molecular

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properties of binding sites or receptors and binding specificities, each of B. subtilis, B. anthracis, and B. cereus are distinct and different due to differences in their chemical structure and physiological, biochemical and chemical properties, and each individual compound would use distinct methods steps and are capable of separate use, which require separate and/or divergent manual/computer search, bibliographic patent and non-patent literature searches which are separately and individually burdensome.

Additionally different methods would result in the use of different reagents and encompass the use of independent and/or distinctly different compounds and method objectives.

Accordingly, applicant is required under 35 U.S.C. 121 to elect

(a) From among (5-12 mers) a single or a specific peptide ligand, to bind to specific spores of a specific bacterial strain.

and

(b) A specific bacterial strain (B. subtilis or B. anthracis, or B. cereus)

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

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are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

***General information regarding further correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Tahira Bhatti whose telephone number is (703) 605-1203.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jyothsana Venkat (art unit 1627), can be reached at (703) 308 0570

Any inquiry of a general nature, or relating to the status of this application, should be directed to the Group receptionist whose telephone number is (702) 308-0196

Tahira Bhatti (art unit 1627)  
October Nov. 7th, 2001

BENNETT CELSA  
PRIMARY EXAMINER

